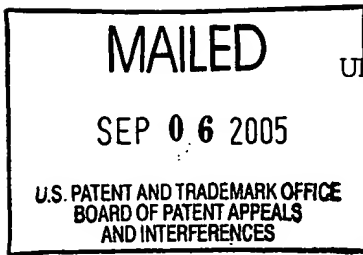


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID JOHN TYRRELL, CHANTEL SPRING BUHROW, DAVID ROLAND OTTS, DUANE GERARD KRZYSIK, EARL DAVID BROCK, JAMES LOUIS CAHALL, and SAMUEL QCHENG LIN

Appeal No. 2005-1186
Application No. 09/746,872

ON BRIEF

Before PAK, OWENS, and PAWLIKOWSKI, Administrative Patent Judges.
PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-7, and 10-57.

Claims 1 and 21 are representative of the subject matter on appeal, and are set forth below:

1. An absorbent article comprising:

- (a) an outer cover;
- (b) a liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover;
- (c) an absorbent body that is located between the bodyside liner and the outer cover; and

- (d) a composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 10 to about 90 weight percent of hydrophilic solvent, from about 10 to about 90 percent by weight of high molecular weight polyethylene glycol, from about 0 to about 40 percent by weight of C₁₄ to C₃₀ fatty alcohol, from about 0 to about 40 percent by weight of C₁₄ to C₃₀ fatty acid and from about 0.1 to about 20 percent by weight of decoupling polymer.

21. An absorbent article comprising:

- (a) an outer cover;
- (b) a liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover;
- (c) an absorbent body that is located between the bodyside liner and the outer cover; and
- (d) a composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 10 to about 80 percent by weight of hydrophilic solvent, from about 10 to about 90 percent by weight of high molecular weight polyethylene glycol having a molecular weight of at least about 720 daltons, from about 1 to about 30 percent by weight of C₁₄ to C₃₀ fatty alcohol, from about 1 to about 30 percent by weight of C₁₄ and C₃₀ fatty acid, from about 1 to about 10 percent by weight of emulsifying surfactant having a combined HLB in a range greater than 7, from about 0.1 to about 30 percent by weight of natural fats or oils, from about 0.1 to about 10 percent by weight of sterols or sterol derivatives, from about 0.1 to about 10 percent by weight of emollient and from about 0.1 to about 20 percent weight of decoupling polymer.

Claims 1-7 and 10-57 stand rejected under 35 U.S.C. §103 as being obvious over Krzysik in view of Klofta, and further in view of Beerse.

The examiner relied upon the following references for patentability.

Krzysik et al. (Kryzik)	6,149,934	Nov. 21, 2000
Klofta et al. (Klofta)	6,238,682	May 29, 2001
Beerse et al. (Beerse)	6,294,186	Sep. 25, 2001

Appellants have grouped the claims into two groupings, as set forth at the top of page 7 of the Brief. In accordance therein, we consider claims 1 and 21 in this appeal. See former regulation 37 CFR § 1.192(c)(7)(2004) and compare current regulation 37 CFR § 41.37(c)(1)(vii)(September 13, 2004). Also see Ex parte Schier, 21 USPQ2d 1016, 1018 (Bd. Pat. App. & Int. 1991).

We have carefully reviewed the appellants' brief, the examiner's answer, and the evidence of record. This review has led us to conclude that the examiner's rejection is well-founded.

OPINION

I. 35 U.S.C. § 103 rejection of claims 1-7, 10-34, 37-41, 43, 45-47, and 49-57 as being obvious over Krzysik in view of Klofta, and further in view of Beerse

The examiner's position for this rejection is set forth at pages 3-5 of the answer.

Appellants' essential arguments, as set forth on pages 6-11 of the brief, include (1) that the examiner has failed to identify how

the cited references suggest the desirability of modifying the composition of Krzysik, to include components of Klofta and Beerse. Appellants argue that the examiner does not explain why one of ordinary skill in the art would pick and choose components from Klofta to form a lotion for diapers. Secondly, appellants argue that the examiner has failed to show a reasonable expectation of success. We are not convinced by appellants' arguments for the following reasons.

Firstly, we refer to the examiner's response in this regard, made on pages 5-7 of the answer, and incorporate it as our own. We add the following comments for emphasis.

We note that in order for a prima facie case of obviousness of a claimed invention to be established, the prior art as applied must be such that it would have provided one of ordinary skill in the art with both a suggestion to carry out appellants' claimed invention and a reasonable expectation of success in so doing. See In re Dow Chem. Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Both the suggestion and the expectation of success must be found in the prior art, not in the appellants' disclosure. Id. We also note that obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the reference or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). We again note that the prior art can be modified or combined to reject claims as prima facie obvious as long as one of ordinary skill in the art would have had a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 1097, 231 USPQ

375, 379 (Fed. Cir. 1986). As explained below, we determine that the examiner has set forth a prima facie case of obviousness.

The examiner has adequately established that the applied art would have provided one of ordinary skill in the art with both the suggestion to carry out appellants' claimed invention and a reasonable expectation of success in so doing. Id., In re Dow. The examiner explains why substitution of the composition taught by Klofta, in place of the composition of Krzysik, is suggested by the applied art. As explained by the examiner on page 4 of the answer, Klofta discloses a lotion composition. The lotion imparts a soft, lubricious feel, and tends to be mild to the skin, thus mitigating the potential for skin irritation. See column 1, lines 17-25 of Klofta. Other benefits are listed at column 4, at lines 27-49 of Klofta. These teachings support the examiner's statement made on page 4 of the answer that it would have been obvious to modify the composition of Krzysik by substituting the composition of Klofta in order to provide a lotion composition that kills viruses and imparts a soft lubricious feel (among the other benefits taught by Klofta).

With regard to the reasonable expectation of success criteria, the lotion in Klofta is applied to paper products. See column 1, lines 17-29. The lotion formulation in Krzysik is applied to absorbent articles, such as diapers. See column 4, lines 19-29. See also figure 1. As such, there exists a reasonable expectation of success that the lotion formulation, that is applied to a paper product of Klofta, would function as expected in the absorbent article of Krzysik.

With regard to the reference of Breece, the examiner relied upon Breece for teaching that components such as sterol and a decoupling polymer such as a polysaccharide, are well known in the art as additives for compositions that are applied to substrate products such as diapers, tissue type products, disposable garments, etc. Answer, pages 4, 6, and 7.

In view of the above, therefore, and absent evidence of unexpectedly superior results, we agree with the examiner's prima facie case of obviousness.

We therefore affirm the examiner's rejection of claims 1 and 21 (along with claims 2-7, 10-20, 22-34, 37-57).

II CONCLUSION

The 35 U.S.C. §103 rejection of claims 1-7, 10-34, 37-41, 43, 45-47, and 49-57 is affirmed.

AFFIRMED

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